

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

JENNIFER M. OSTERMILLER,

Plaintiff,

vs.

CVS PHARMACY, HALEY
REICHENBACH, BILLINGS POLICE
DEPARTMENT, C/O STEVEN
GEARTNER, and CORY
KIRKPATRICK

Defendants.

CV 19-09-BLG-BMM-JTJ

ORDER

Plaintiff Jennifer M. Ostermiller (“Ostermiller”), a pro se prisoner proceeding without counsel, filed complaint alleging that CVS Pharmacy, Haley Reichenbach, the Billings Police Department, Chief St. John, Steven Gaertner, Cory Kirkpatrick, and Officer Ihde (collectively “Defendants”) violated her rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution. (Doc. 2.) The allegations set forth in Ostermiller’s complaint stem from an automobile accident and her subsequent detainment at the Yellowstone County DUI Detention Center (“DUI-Center”). (Doc. 13 at 3.)

United States Magistrate Judge John Johnston entered his Order and Findings and Recommendations in this matter on July 10, 2019. (Doc. 13.) Judge Johnston determined that defendants Chief St. John, Steven Gaertner, Cory Kirkpatrick, and Officer Ihde are required to file a response to the Ostermiller's complaint. *Id.* at 1-2. Judge Johnston recommended that defendants CVS Pharmacy and Hayley Reichenbach should be dismissed from this action. Judge Johnston further recommended that Ostermiller's claims regarding the search of her person at DUI-Center during which marijuana was found on her person be dismissed without prejudice. *Id.* at 16.

Ostermiller timely filed an objection on July 23, 2019. (Doc. 14.) Ostermiller is entitled to de novo review of those findings and recommendations to which she specifically has objected. 28 U.S.C. § 636(b)(1)(C). Absent specific objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Ostermiller's objection presents a reargument of the same allegations that she brought forth in her original complaint. (Doc. 2.) Ostermiller fails to present a

legal argument and supporting authority to any part of Judge Johnston's Findings and Recommendations. Therefore, the Court reviews Judge Johnson's Findings and Recommendations for clear error. The Court finds no clear error in Judge Johnston's Findings and Recommendations.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 13) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that defendant CVS Pharmacy and defendant Hayley Reichenbach are **DISMISSED**.

IT IS FURTHER ORDERED the Ostermiller's claims regarding the search of her person on December 13, 2019 at the DUI-Center during which marijuana was found on her person are **DISMISSED WITHOUT PREJUDICE**.

DATED this 1st day of August, 2019.



Brian Morris
United States District Court Judge

